U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18133503

Date: SEP. 13, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, project manager specialist, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualifies for the underlying classification, the record did not demonstrate that the proposed endeavor has national importance and that the Petitioner is well positioned to advance it. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner submits additional evidence and reasserts his eligibility, arguing that the Director erred in the decision.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998). Dhanasar states that after a petitioner has established eligibility for EB-2 classification, USCIS may grant a national interest waiver as matter of discretion. See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. We agree. The record contains evidence that the Petitioner earned a foreign four-year degree in computer science in 2004 and has at least five years of professional experience in the information technology (IT) field. The remaining issue to be determined, therefore, is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner described his proposed endeavor in terms of the work he performed in the past, which included executing IT development and support projects for leading international banks and financial institutions. He stated that he performed work related to software analysis, development, and management in publicly listed companies, ensuring compliance with international rules and regulations. The Petitioner also mentioned that he founded a startup, which allows him to choose the role he will play in the United States, whether it be as a key staff member of a U.S. company or as a future entrepreneur who directly employs Americans and contributes to U.S. development and innovation. In response to the Director's request for evidence (RFE), the Petitioner provided the following verbatim bulleted list of proposed work:

- Continue working as an IT professional in the U.S. where I will continue to grow professionally and personally, working closely with those U.S. companies that requires my advance knowledge to improve IT systems.
- Provide project planning, identify project deliveries, involve in client interaction, troubleshooting, project and people management.
- Helping companies to gain competitive advantage through business intelligence solutions
- Working on complex banking systems as business analyst, project manager or system developer.
- Potentially creating a company to provide IT services. I already have my first experience as a startup entrepreneur, and may want to try again.

On appeal, the Petitioner clarifies that although he holds the title of a certified "project manager," he is also a systems engineer by virtue of his computer science education. His appeal includes printouts

of job postings and recruitment for positions that he asserts he is qualified to fill, including an entrepreneur in residence with a financial company and a business analyst with wealth management. He also states that he has applied to a new position within his current employer.

Taken together, we conclude that the Petitioner has not clearly defined his proposed endeavor. Although he proposed many ideas for work within the IT field, the record remains unclear as to whether the Petitioner intends to work as a systems engineer or project manager for a financial entity, pursue a startup, be self-employed, work in one of the IT positions listed in the job posting printouts, or pursue all of these options consecutively or concurrently. In Dhanasar, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." Id. at 889. Here, the Petitioner has not identified his proposed endeavor with sufficient specificity. The purpose of the national interest waiver program is not to enable a petitioner to engage in a U.S. job search. As each of these proposed employment possibilities has the potential to produce a different impact, we conclude that the lack of specificity in the proposed endeavor inhibits a proper examination of the endeavor's national importance. Accordingly, for this reason and the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the Dhanasar analytical framework.

We acknowledge the Petitioner's arguments regarding the importance of the IT field, the shortages of IT workers, and that he is well-qualified for his proposed endeavor. However, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Dhanasar, 26 I&N Dec. at 889. In addition, the Petitioner's knowledge, skills, education, and experience are considerations under Dhanasar's second prong, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of his proposed work.

In Dhanasar, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. We also evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement by looking to evidence that documents the "potential prospective impact" of his work. To illustrate, "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." Id. at 890.

Although the Petitioner's statements reflect his intention to provide valuable IT services for a potential employer or clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In Dhanasar we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. Id. at 893. To the extent that the Petitioner's endeavor can be understood, we conclude the record does not show that it stands to sufficiently extend beyond the employer and clientele to impact the field or the nation's fiscal condition more broadly at a level commensurate with national importance.

In order to illustrate the potential impact of his proposed endeavor, the Petitioner pointed to his success in the past. He claimed that he increased the business results, compliance rates, and technical standards for multiple capital market companies. As a result of his expertise, the Petitioner also claimed that he has increased operations for large businesses, controlled their procedures, improved management, and reduced their expenses and losses, which enabled them to expand. Even if the Petitioner replicates these results for U.S. companies through his proposed endeavor, his help and these results would be contingent upon those companies hiring him to manage their projects and paying him for his services, indicating advancement more for the parties involved than for overall national impact.

On appeal, he argues that through his IT methods and projects, he can "help to increase service levels, profits enhancements, cost savings, etc., therefore generating jobs and improving the results of the fields which in turn impacts the US economy" and is of national interest. While we acknowledge these claims, the Petitioner has not offered sufficient evidence to substantiate them. For instance, the Petitioner has not identified any clients he plans to work with or any projects he intends to engage in, nor has he provided specific and concrete examples of how his help would increase service levels or enhance profits and cost savings. The Petitioner has not offered a breakdown of the type or number of jobs the endeavor will lead to, nor can we ascertain where the jobs would be, such as within the Petitioner's employer, as a part of the Petitioner's own business, or within the IT field generally. Finally, the Petitioner made little attempt to substantiate how his proposed endeavor would operate at a level so significant that it would impact the U.S. economy. For example, we have little information on how much revenue the Petitioner's proposed endeavor will generate or for whom. The Petitioner must support its assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's projects would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890.

We examined the numerous recommendation letters from the Petitioner's former coworkers, employers, and superiors in which the authors praise the Petitioner's personal qualities, work abilities, and vast experience. However, few authors demonstrate knowledge of the Petitioner's proposed endeavor; instead, they focus on the Petitioner's past work. Although the authors identified the Petitioner's career successes, including his management of a new fund registration system compatible with the client's system and which supported ISO 20022 standardized messages, they did not substantiate how the Petitioner's work impacted the IT field, as opposed to the individual clients and employers for whom the Petitioner worked. While such a project may have been important to the client, the record does not support a finding that it had importance to the IT field as a whole, nor does the record contain sufficient information concerning the Petitioner's specific role in the project's success. While we acknowledge the ISO 20022 newsletter concerning the topic, the article contains no mention of the Petitioner or his specific work in this area.

Although some letters reference the Petitioner's unique techniques and new methodologies, the authors do not explain what they are or provide details concerning what makes them new or unique. Moreover, the authors do not explain how others who have not worked with the Petitioner would know about the Petitioner's unique or new techniques and methodologies. The record contains little indication that other IT professionals have adopted the Petitioner's techniques and methodologies. Accordingly, the letters do not contain specific examples as to how the Petitioner's work has influenced

the field. Although the authors offer general praise, generalized conclusory statements that do not identify a specific impact in the field have little probative value. See 1756, Inc. *v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. Id. See also Matter of V-K-, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

Also in support of his claims, the Petitioner submitted an opinion letter from [redacted], a professor of computer science and information systems at [redacted] University. [redacted] largely discusses the Petitioner's past work and does not demonstrate in-depth knowledge of the Petitioner's proposed endeavor. Nevertheless, he asserted that the Petitioner's endeavor would increase the productivity of the U.S. IT industry, allow the United States to maintain its lead in the world market, as well as impact the Gross Domestic Product (GDP) and lead to job growth. In addition, [redacted] claimed that the Petitioner's proposal to lead large-scale IT infrastructure development and implementation projects will improve the efficiency and competitiveness of major institutional clients and contribute to the continued growth and global dominance of the United States' IT industry. While we acknowledge these claims, neither [redacted] nor the Petitioner offers sufficient evidence to substantiate them. For instance, the Petitioner has not identified any institutional clients he has contracted with or plans to work with, nor has he provided concrete examples of how he will improve their efficiency and competitiveness. The Petitioner has not provided an estimate of how much revenue or business he will generate for his clients and therefore, we have little evidence to support a finding that the endeavor would operate on a level so substantial as to impact the GDP. As previously explained, we do not have evidence of the type or number of jobs the endeavor leads to, nor is there any indication of where the jobs would be created. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. Id. We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. Id. As [redacted] has offered insufficient corroborating evidence to support his claims, we conclude, consistent with Caron *Int'l, Inc.*, that his opinion carries little weight in this matter.

As previously stated, the Petitioner proposed many ideas for work within the IT field, but he has yet to identify his specific proposed endeavor. In addition, the Petitioner's evidence is insufficient to show how his proposed work has broader implications for his field, as opposed to being limited to the clients and the companies who hire him. Accordingly, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.